

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL PETITION NO. 4257 OF 2006

Anitha (M/s.Bay Watch Rest. & Bar) V. Shetye ..Petitioner

Vs.

The Deputy Commissioner of Police, (H.Q.), Greater Mumbai and anr. ..Respondents

Mrs. Veena B. Thadani for petitioner.
Mr. A.H. Palekar, AGP for State.

CORAM: B.H. MARLAPALLE, J.

Date : July 19, 2006.

P.C.:

1. Heard Mrs. Thadani the learned counsel for the petitioner and Mr. Palekar, the learned AGP for the State.

2. Perused the affidavit in reply filed by the Inspector of Police, Desk-10, Theatre Branch, Police Commissionerate, Mumbai and also the R & P placed before me.

3. The Deputy Commissioner of Police, (Head Quarter-1) from the Police Commissionerate, Mumbai by his order dated 5/3/2005 directed suspension of the

petitioner's establishment i.e. M/s.Bay Watch Restaurant and Bar for a period of 30 days. This order was carried in appeal before the State Government and the Hon'ble Minister for Home, Government of Maharashtra dismissed the appeal on 12/6/2006 and thus the order passed by the Deputy Commissioner of Police has been confirmed.

4. The Lower Authorities were satisfied on perusal of record that the petitioner's establishment was on some occasions open beyond the prescribed time, inspite of being made aware, the petitioner's establishment repeatedly committed violations of the licence conditions and, therefore, there was a case to believe that the petitioner has no respect for law. In short, there was violation of Rules 7(a) and 8(1) of the Public Entertainment Licence Rules 1953. This satisfaction of both the authorities below is based on the report submitted by the police and this fact findings concurrently upheld do not call for any interference in this petition under Article 227 of the Constitution.

5. However, Mrs. Thadani submitted that the

petitioner had submitted an application seeking change in the name of Manager and the application was kept pending from 2002 onwards. Mr. Palekar, the learned AGP, submits that the application was kept pending may be for the reasons that the criminal cases filed under the Bombay Police Act, 1951 were pending. Undoubtedly, these cases have resulted in acquittal of the petitioner or the Manager concerned and, therefore, it was necessary for the competent authority concerned to decide the pending application. It has also been noted that even as on 5/1/2005 the petitioner's establishment was seen open till 4.45 a.m. and 41 persons were taken in custody.

6. Having regards to the totality of circumstances, though I am satisfied that the authorities below had rightly recorded that the petitioner's establishment was kept open on some occasions beyond the prescribed time, it need not be punished on the second ground i.e. violation of Rule 8(1) of the Public Entertainment Rules 1953. As a matter of policy and to demonstrate full transparency in the administration, the competent authority may consider to decide the application for change of

Manager within a fixed period and when such applications are submitted during the pendency of criminal cases before the competent courts, the applications could be rejected so that the parties concerned may re-approach after the cases are decided, but keeping such applications pending may give rise to undesired practices.

7. Hence, while confirming the findings recorded by both the authorities below, it would be just and proper that by way of penalty the establishment of the petitioner is closed temporarily for a period of two weeks. It is, therefore, directed that the petitioner shall close her establishment i.e. M/s. Bay Watch Restaurant and Bar from 24/7/2006 to 6/8/2006.

8. The petition is disposed off in terms of the above modified order.

(B.H. Marlapalle,J.)